

**IN THE COURT OF THE DISTRICT CONSUMER DISPUTES
REDRESSAL FORUM, MALKANGIRI**

LATHIAGUDA, MALKANGIRI COLONY, MALKANGIRI, 764046

consumer case(CC) No. CC/457/11

Jara Sabar MadhiAppellant(s)

Vs.

Public Information Officer, DIPRORespondent(s)

BEFORE:

Complainant(s)/Appellant(s):

Opposite Party/Respondent(s):

Opposite Party/Respondent(s):

Opposite Party/Respondent(s):

ORDER

s per – President : Mr.A.K.Pattnaik

The Brief averments of the complaint filed by the Complainant is as follows :

1. That on 28.08.2010 the complainant applied for supply of information under the R.T.I Act, 2005 along with the prescribed fees in shape of treasury challan No 1109 dated 27.08.2010 for Rs.10/- in the office of the Opposite Party No-1 subsequently who forwarded the same to the Opposite Party No-2. On contact by the Opposite Party No-2 advised to wait for some time more to get the information. The complainant approached the Opposite Parties several times which yielded no result. The Opposite Party No-2 neither supplied the requisite information nor gave any letter for deposit of money or rejected the application but made the complainant to run their office repeatedly. Due to irresponsible, willful, deliberate, negligent and deficient services/action of the Opposite Parties, the complainant was physically harassed, mentally depressed and sustained mental agony and physical

inconvenience and finding no other alternative the complainant knocked the door of this forum on a prayer to supply the requisite information to the complainant on free of cost, to pay the sum of Rs.20,000/- (Rupees twenty thousand) only as compensation towards his mental agony, physical harassment and financial loss and to pay an amount of Rs.3,000/- towards litigation expenses.

2. The Notice is duly served to the Opposite Party No 1 & 2 through the Office peon of the Forum on 13.12.2011 and 11.01.2012 respectively. Despite the notice and sufficient opportunity granted to the Opposite Parties they did not choose to contest the case for which they were set ex-parte vide our order dated 23.4.2012

3. In support of his case the complainant has filed Affidavit of his own marked herein as Exhibit C-1. The copy of RTI application dated 28.08.2010 marked herein as Exhibit C-2(a) C-2(b) and C-2(c). The copy of receipt dated 28.08.2010 of RTI application marked herein as Exhibit-3. The copy of Treasury Challan marked herein as Exhibit C-4. The forwarding letter of RTI application dated 28.08.2010 of Opposite Party No-1 to Opposite Party No-2 is marked herein as Exhibit-C-5. Reminder letter dated 30.4.2011 of the complainant marked herein as Exhibit C-6.

4 In course of ex-parte hearing we heard the complainant at length. Perused the complaint petition minutely and the documents available in the record very carefully. The points for determination before us is as follows :

- I) Whether the complaint is maintainable under the C.P.Act. ?
- II) Whether there is any deficiency in service on the part of the O.Ps?
- III) If so to what relief the complainant is entitled to ?

5. POINT NO – I On the question of maintainability of the complaint we referred the decision of our Hon'ble National Consumer Dispute Redressal Commission, New Delhi in the case of "Dr.S.P.Thirumala Rao, Mysore... petitioner –vs- Municipal Commissioner, Mysore City Municipal Corporation, Mysore..Respondent in R.P.No.1975 of 2005 dated 28.05.2009" wherein it is held as follows:

"Though, the said Act provides for penalties under Section 9 of the said Act on the competent authority, yet, the Act does not provide for any remedy to the consumers who have sought information under the said Act for deficiency of service in the nature of compensation or damages for not furnishing the information sought to which they are entitled to get under the said Act. Section 3 of the CPA provides additional remedy in addition to the remedies provided under other Acts and it is not in derogation of any provisions of any law. The Consumer Fora has, therefore, jurisdiction to entertain the complaint in respect of deficiency of service in the given facts especially when information sought was not furnished."

and,

"Even though, further remedy may be available to the applicant in case information is not supplied in terms of Section 5 of the Act within 15 days, yet, there is no bar to approach the District Forum for deficiency of service."

and,

“The applicant had paid a fee of Rs.10/- for seeking the said information. The case of the applicant would fall within the scope and ambit of Section 2 (i)(o) of CP Act, which provides that service means service of any description which is made available to potential users, which include purveying of news or supplying of other information. The complainant had availed of the services under the said Act for consideration by paying fee and had sought information under the said Act, which was not supplied to him, which amounts to deficiency of service. The complainant is, true, a consumer vis-à-vis information sought on payment under the said Act.”

6. We may refer to other pronouncement of the Hon’ble Supreme Court in the case of Fair Air Engineers Pvt. Ltd. and another versus N.K.Modi – III (1996) CPJ 1 (SC) and Skypak Couriers Ltd. Versus Tata Chemicals Ltd.- AIR 2000 SC 2008 in which it was held that despite an arbitration clause, the complaint by a consumer under the CP Act,1986 was tenable since the remedy provided under the CP Act is in addition to the provisions of any other law.

7. In the case of Secretary, Tirumurugan Co-operative Agricultural Credit Society Versus M.Lalitha & Ors reported in (2004) 1 SCC 305 the Hon’ble Supreme Court at para 11 & 12 held that having due regard to the scheme of the CP Act and the purpose sought to be achieved to protect the interest of the consumer better, its provisions are to be interpreted broadly, positively and purposefully to give meaning to additional/extended jurisdiction, particularly when section 3 seeks to provide remedy under the Acts in addition to other remedies provided under other Acts unless there is clear bar.

8. Regarding bar of jurisdiction of Court we may refer to the judgements of the Hon’ble National Commission in Smt. Kalawati & Ors Versus United Vaish Co-operative Thrift & Credit Society Ltd. reported in 2002 CTJ 477 (CP) (NC) in which the question involved was whether the provision of the Delhi Co-operative Society Act, particularly Section 93 reads as under:-

“93 Bar of jurisdiction of Court.”

dealing with this provisions containing bar of jurisdiction the Hon’ble Apex Commission observed as under :-

“For one thing a District Forum is not a Civil Court though it may have the trappings of a civil court. Neither it is a revenue court. We therefore, do not think that section 93 of Society Act would come in the way of the District Forum assuming jurisdiction.”

9. We referred the decision of the Hon’ble Central Information Commission, New Delhi in the matter of Sarat Chandra Agrawal Versus Ministry of Railway, Railway Board, New Delhi in a case numbered as CIC/OK/A/2006/00432 wherein the Commission at para-8 held that:

“After hearing both the parties, the commission felt that as for the issue of compensation to Shri Agrawal, the consumer forum was the more appropriate agency”

10. In view of the above facts, circumstances and applying the ratio of decisions of the Hon’ble Supreme Court, Hon’ble National

Consumer Dispute Redressal Commission and Hon'ble Central Information Commission as discussed above we are of the opinion that the complaint is maintainable in the Consumer Forum under the provisions of C.P. Act.,1986. This point is answered accordingly.

11. POINT NO – II. It is the case of the complainant that on 28-08-2010 he submitted an application along with application fee to the opposite party No-1 seeking certain information from the opposite party No-2 under R.T.I. Act, 2005. The said application was forwarded by the Opposite Party No-1 to Opposite Party No-2 under the provision of RTI Act-2005. The complainant in his sworn affidavit clearly stated that he sent. As seen from Ex.C-2 (a), C-2(b) & C-2(c) the RTI application of the complainant and the forwarding letter of the Opposite Party No1 to Opposite Party No-2 Ex-c-5 it is very clear that on 28.08.2010 the complainant submitted the application to opposite party No-1 under R.T.I. Act seeking the information. The opposite party having received application from the complainant forwarded it to the Opposite Party No-2 vides Exhibit-C-5 but the Opposite Party No-2 did not furnish the information as sought by the complainant in his application. The opposite party did not give any reply for its failure to furnish the information to the complainant. The opposite party is negligent and there is deficiency of service on the part of the opposite party No-2. Under R.T.I. Act the opposite party is bound furnish the information sought by the complainant if it is available in the office. The opposite party intentionally failed to furnish the information sought by the complainant. In circumstance of the case we think it is just and proper to direct the opposite party to furnish the information required by the complainant.

12. The Hon'ble Apex Court in the case of Lucknow Development authority vs. M.K.Gupta reported in 1994(1) SCC 243 held as under:

“The authority empowered to function under a statute while exercising power discharges public duty; it has to act to observe general welfare in common good; in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system; where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment and that the officer can no more claim to be under any protective cover”.

Again at para 10 the Hon'ble Supreme Court further held that :-

“Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in

curing social evil. It may result in improving the work culture and help in changing the outlook.”

13. From the above discussion this forum is of the view that the Opposite Party No.1 has committed deficiency in service to the complainant by not sending the intimation letter for the payment of the cost of the information and thereafter not furnishing the information under the provision of sub section 6 of section 7 of RTI Act, 2005 and this point is answered accordingly.

14. As regards to the deficiency in service on the part of the Opposite Party number-1, it is clear that the Opposite Party No-1 has forwarded the RTI application of the complainant to the Opposite Party No-2 in time under the provision of RTI Act and rules there under as such there is no iota of evidence to held him liable under the provision of C.P.Act.,1986

15. POINT NO. III - As we have already held in the foregoing paras that the complaint is maintainable and the Opposite Party No-2 has committed deficiency in service to the complainant . In our considered opinion the complainant is entitled to get relief. Hence, we are inclined to pass the following order. Hence it is ORDERED :

ORDER

16. The Opposite Party No-2 is directed to furnish the required information sought by the complainant in his application dated 28.08.2010 on free of cost under intimation to this Forum if not under the exempted category under the provision of RTI Act.

18. The Order shall be complied within a period of one month from the date of this order failing which the complainant is at liberty to execute this order by invoking section 25 & 27 of the C.P.Act, 1986.

19. The complaint is allowed to the extent indicated above.

20. A free copy of this order be supplied to the parties at an early date

21. Pronounced in the open forum on the 30th April, 2012

22. A copy of this order also be sent to the Block Development Officer, Malkangiri, Project Director, DRDA, Malkangiri and the Collector Malkangiri for information and necessary action

Mr. Ashok Kumar Pattnaik

President

Mrs. Bhawani Acharya

Member